

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Agriculture and Small Business, to which was referred Senate Bill No. 53, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, delete lines 1 through 17, begin a new paragraph and insert:
- 2 "SECTION 1. IC 15-4-11-8.3 IS ADDED TO THE INDIANA
- 3 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 4 [EFFECTIVE JULY 1, 2002]: **Sec. 8.3. The council shall do the**
- 5 **following:**
- 6 (1) **Assist buyers and sellers in determining the validity of**
- 7 **complaints between the buyer and the seller.**
- 8 (2) **Recommend cost damages resulting from the failure of**
- 9 **seed to perform or produce properly, whether related to:**
- 10 **(A) specific representations on the label;**
- 11 **(B) other information on the seed container; or**
- 12 **(C) conditions attributed to the quality of the seed.**
- 13 SECTION 2. IC 15-4-11-8.5 IS ADDED TO THE INDIANA CODE
- 14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 15 1, 2002]: **Sec. 8.5. The council may do the following:**
- 16 (1) **Examine all nonprivileged records of the buyer and the**
- 17 **seller that the council considers relevant to a complaint filed**
- 18 **under this chapter.**
- 19 (2) **Investigate and conduct those tests that the council**
- 20 **considers necessary to determine the validity of the complaint.**

The council may enter into contracts with qualified persons to perform investigations and tests conducted under this subdivision.

(3) Hold hearings at the times and places designated by the chairman to perform the functions described in section 8.3 of this chapter. Written notice of a hearing must be given to the buyer and the seller not later than twenty (20) days before the hearing. Each party must be given an opportunity to present its position at a hearing.

(4) Negotiate and recommend to the buyer and the seller conditions for settlement of a complaint.

(5) Hold hearings to present:

(A) the results of the investigations of a complaint; and

(B) the recommendations to the buyer and the seller for settlement of the complaint.

(6) Enter the property of the buyer or the seller to obtain information and perform investigations under this chapter.

(7) Compel either or both of the following by subpoena:

(A) The attendance and testimony of witnesses.

(B) The production of documents.

If the council issues a subpoena, the circuit or superior court of the county where a subpoena is to be served shall enforce the subpoena.

SECTION 3. IC 15-4-11-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 9. (a) As a condition precedent to maintaining a civil action against a seller for failure of the agricultural or vegetable seeds to produce or perform:

(1) as represented by the label required to be attached to those seeds or furnished under IC 15-4-1-4 or IC 15-4-1-5;

(2) as represented by warranty; or

(3) because of negligence;

the buyer must submit the claim to arbitration.

(b) Any applicable period of limitation with respect to a claim subject to this chapter is tolled until ~~ten (10)~~ **twenty (20)** days after the filing of the report of arbitration with the commissioner.

SECTION 4. IC 15-4-11-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) As a condition precedent to asserting a counterclaim or a defense in an action brought by a seller against a buyer, the counterclaim or defense must be submitted to arbitration.

(b) Upon the buyer's filing of a written notice of intention to assert a claim as a counterclaim or defense, accompanied by a copy of the

1 buyer's complaint in arbitration filed under section 15 of this chapter,
 2 the action brought by the seller shall be stayed and any applicable
 3 statute of limitations is tolled with respect to the claim until ~~ten (10)~~
 4 **twenty (20)** days after filing of the report of arbitration with the
 5 commissioner.

6 SECTION 5. IC 15-4-11-14 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 14. (a) A buyer shall
 8 invoke arbitration under this chapter by filing a sworn complaint with
 9 the commissioner together with a filing fee of ~~ten one hundred~~ dollars
 10 ~~(\$10): (\$100)~~. The buyer shall serve a copy of the complaint upon the
 11 seller by certified mail.

12 (b) Except in case of seed that has not been planted, the claim shall
 13 be filed within ~~such a reasonable~~ time **after the alleged defect or**
 14 **violation becomes apparent** so as to permit effective inspection of:

15 (1) the **crops or** plants under field conditions; or

16 (2) the **grain harvested from the crops or plants.**

17 (c) **Notwithstanding subsection (b), a claim must be filed not**
 18 **later than ninety (90) days after completion of the harvest.**

19 SECTION 6. IC 15-4-11-15 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 15. ~~Within five (5)~~ (a)
 21 **Not later than twenty (20)** days after receipt of a copy of the
 22 complaint, the seller shall file with the commissioner an answer to the
 23 complaint and serve a copy of the answer upon the buyer by certified
 24 mail.

25 (b) **The seller shall pay a filing fee of one hundred dollars (\$100)**
 26 **to the commissioner when the seller files the answer to the**
 27 **complaint under subsection (a).**

28 SECTION 7. IC 15-4-11-15.5 IS ADDED TO THE INDIANA
 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 2002]: Sec. 15.5. (a) **Before beginning a**
 31 **complaint investigation, the commissioner shall prepare and**
 32 **provide to the parties an estimate of the costs to be incurred during**
 33 **the investigation of the complaint.**

34 (b) **Before a complaint investigation begins, the buyer and the**
 35 **seller shall each pay to the commissioner an amount equal to fifty**
 36 **percent (50%) of the costs estimated by the commissioner under**
 37 **subsection (a). The money required to be paid under this**
 38 **subsection is in addition to the filing fee required by sections 14**
 39 **and 15 of this chapter.**

40 (c) **The commissioner shall deposit the money paid under**
 41 **subsection (b) into a separate account. The costs of the**
 42 **investigation shall be paid from money in the account.**

(d) If the actual costs of the investigation are greater than the costs estimated under subsection (a), the buyer and the seller shall each pay fifty percent (50%) of the difference between the actual costs and the costs estimated under subsection (a).

(e) If the actual costs of the investigation are less than the costs estimated under subsection (a), the commissioner shall refund to the buyer and the seller each fifty percent (50%) of the difference between the actual costs and the costs estimated under subsection (a).

SECTION 8. IC 15-4-11-17.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 17.5. If the council determines that a hearing should be conducted for the parties to present their respective positions, a party may have attorneys present with whom the party may confer, but an attorney for a party may not participate directly in the proceedings unless requested to do so by the chairman.**

SECTION 9. IC 15-4-11-20.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 20.5. The council shall ensure that all trade secrets and other information of a proprietary nature collected during the course of an investigation under this chapter be kept confidential to the degree necessary to ensure the property rights of the seller and the civil rights of the buyer.**

SECTION 10. IC 15-4-11-22.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 22.5. The buyer and seller shall each give written notice to the commissioner of the acceptance or rejection of the council's recommended terms of settlement not later than thirty (30) days after the date of the council's recommendation.**

SECTION 11. IC 15-4-11-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 24. The commissioner may adopt rules under IC 4-22-2 to do the following:**

(1) Describe the conditions and circumstances relating to seed to which arbitration under this chapter is applicable.

(2) Supplement the procedures of the arbitration process set forth in this chapter.

SECTION 12. IC 15-4-11-19 IS REPEALED [EFFECTIVE JULY 1, 2002]."

Delete page 2.

(Reference is to SB 53 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 7, Nays 0.

Senator Nugent, Chairperson